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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,990	07/11/2003	Michael D. Gandrud	P06591US0	4246
34082	7590	05/26/2006	EXAMINER	
ZARLEY LAW FIRM P.L.C. CAPITAL SQUARE 400 LOCUST, SUITE 200 DES MOINES, IA 50309-2350				LOPEZ, FRANK D
			ART UNIT	PAPER NUMBER
			3745	

DATE MAILED: 05/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/617,990	GANDRUD, MICHAEL D.	
	Examiner F. Daniel Lopez	Art Unit 3745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 17 March 2006.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-5 and 13-18 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-5 and 13-17 is/are rejected.

7) Claim(s) 18 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

***Response to Amendment***

Applicant's arguments filed March 17, 2006, have been fully considered but they are not deemed to be persuasive.

Applicant argues that Izumi et al teaches activating both control valves, simultaneously, in order to relieve pressure, since when the directional control valve (20) is switched, one of the valves is opened while the other valve is closed. This does not meet the claim limitation, to "provide a loop flushing flow by activating only the control valve which is connected to a low pressure side" (claim 13 line 14-16).

There are two problems with applicant's argument. First is a matter of semantics. It would appear that the valve is activated to open it, whereas the other valve is deactivated to close it. Therefore, only one of the valves is activated.

The second is a matter of what applicant has disclosed. It would appear that if the instant system has the low pressure switched from one line to the other line, the control system switches the valve that is open to be closed and the valve that is closed to be open. This is the same as the system of Izumi et al.

Both of the problems discussed above indicate that the rejection of claim 13 using Izumi et al is a valid rejection.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 112***

Claims 1-5 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 line 6-7 "control valve in at least one of the system pressure lines" is wrong, since the control valve is connected to one of the system pressure lines, not in it.

Claims not specifically mentioned are indefinite, since they depend from one of the above claims.

***Claim Rejections - 35 USC § 102***

Claims 13-15 and 17 are rejected under 35 U.S.C. § 102(b) as being anticipated by Izumi et al (see discussion below).

***Claim Rejections - 35 USC § 103***

Claim 16 is rejected under 35 U.S.C. § 103 as being unpatentable over Izumi et al. Izumi et al discloses a loop flushing circuit comprising a hydraulic motor (2) fluidly connected by first and second lines (including A, B, respectively) to a variable displacement pump (1); first and second poppet type control valves (12, 13, respectively) fluidly connected to respective one of the lines; a control means (19, 20) operably connected to the control valves, to open the control valve when pressure in the one line is low pressure side of the loop; but does not disclose that at least one of the control valves is a spool valve.

Official notice is taken that spool valves and poppet valves can be used interchangeably. It would have been obvious at the time the invention was made to one having ordinary skill in the art to replace the poppet type control valves of Izumi et al with spool type control valves, as a matter of engineering expediency.

***Conclusion***

Claims 1-5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. § 112, second paragraph, set forth in this Office action.

Claim 18 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Lopez whose telephone number is 571-272-4821. The examiner can normally be reached on Monday-Thursday from 6:15 AM -3:45 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Look, can be reached on 571-272-4820. The fax number for this group is 571-273-8300. Any inquiry of a general nature should be directed to the Help Desk, whose telephone number is 1-800-PTO-9199.



F. Daniel Lopez  
Primary Examiner  
Art Unit 3745  
May 18, 2006